



## U. S. Fish and Wildlife Service

# Final Rule to designate a Manatee Refuge in Lee County, Florida

## Background

Manatees are a federally protected under both the Endangered Species Act and Marine Mammal Protection Act. Currently, collisions with watercraft probably constitute the greatest human-caused threat to the species. Historically, these collisions are responsible for about 25 percent of all manatee deaths and about 80 percent of all human-caused mortality in manatees.

## Issue

In the State of Florida Fish and Wildlife Conservation Commission (FWC) v. Wilkinson et al., boaters, who were issued citations for alleged different violations of Rule 68C-22.005 (Rule), challenged the Rule adopted by the FWC regulating the operation and speed of motorboat traffic in Lee County waters to protect manatees. In its ruling, the court determined that under Florida law the FWC can regulate the operation and speed of motorboats in order to protect manatees from harmful collisions with motorboats, however: (1) in the area to be regulated, manatee sightings must be frequent and, based upon available scientific information, manatees inhabit these areas on a regular, periodic or continuous basis; and, (2) when the FWC adopts rules, it must consider the rights of boaters, fishermen and water-skiers and the restrictions adopted by the FWC must not unduly interfere with those rights. In this instance, the court found that the Rule for four of the regulated areas did not meet the State standard for the frequency of sightings and the rule unduly interfered with the rights of boaters. Thus, the designated manatee protection zones were invalidated and the citations were dismissed. The absence of zones and enforcement in these areas increases the potential for manatees to suffer injury and death from watercraft collisions. The court's ruling does not affect Federal speed zones in Lee County.

In 2004, the Commission recovered four manatee carcasses in the areas affected by the Court's ruling. Subsequent necropsies revealed that the animals died of injuries suffered from collisions with boats. Including these four deaths, there have been at least 18 watercraft-related manatee deaths in these five areas since 1999.

## Status

As a result of the Court's decision and based on the best available data, the Service proposed to establish the Pine Island-Estero Bay Manatee Refuge. Federal authority to establish protection areas for the Florida manatee is provided by the ESA and the MMPA and is codified in 50 CFR, part 17, subpart J. The Service proposed to make this designation permanent through the formal rulemaking process. This process included an extended period (180 days) for public comment as well as a public hearing which was conducted on January 12, 2005. The majority of comments received were in support of the Federal designation. This manatee refuge corresponds exactly to the previous State designations in these areas; the Federal restrictions now in place in each area are also the same as the previous State restrictions. One difference between the restrictions is there are no provisions under Federal law to allow exemptions to the federally-designated manatee refuge. Thus, businesses and individuals who previously held State exemption permits were made aware in April 2004 that their permits are no longer valid.

## Questions?

The regulation and additional information on this action is available on the Service's web site at [verobeach.fws.gov](http://verobeach.fws.gov), or may be requested by writing via e-mail to [verobeach@fws.gov](mailto:verobeach@fws.gov); by faxing your request to 772-562-4288; or by letter to U.S. Fish and Wildlife Service, Attn: Proposed MPA Rule, 1339 20th Street, Vero Beach, FL 32960. If you have specific questions or need special assistance, please contact the Service's South Florida Field Office at 772-562-3909.